



# ARIZONA ELECTION LAW REFORM

Proposals by Stephen Richer  
Maricopa County Recorder

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# Arizona Election Law Reform

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For the past two years, I've been statutorily responsible for certain components of the election process in Maricopa County, including voter registration, early voting, and provisional ballots. I have also closely observed the election administration responsibilities of the Board of Supervisors: emergency voting, election day, and tabulation.<sup>1</sup>

Arizona election administration can and should be improved. This is true of both operations and law. Below are proposed changes to Arizona's election laws. Please note that though I am president of the Arizona Association of County Recorders, the below does not necessarily represent the views of all 15 county recorders.

## Principles

- Arizona election administration can and should be improved.
- Legislative reforms are an important component of improving Arizona's elections.
- Proposed legislative reforms should address real, material, verifiable needs or weaknesses in election administration.
- Real, material, verifiable needs or weaknesses in election administration should be addressed by effective solutions.
- Proposed legislative reforms should impose no larger a burden on voters than is *necessary* to address a real, material, verifiable need or weakness.
- Ex-post assessments and penalties should be favored over ex-ante regulatory burdens imposed on all voters. In other words, reforms should favor post-election assessments to determine the functionality of systems and identify and punish any wrongdoing rather than a system that imposes additional burdens on every voter, the vast, vast majority of whom are complying with the law.

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<sup>1</sup> This same statutory framework applies to all 15 Arizona counties.

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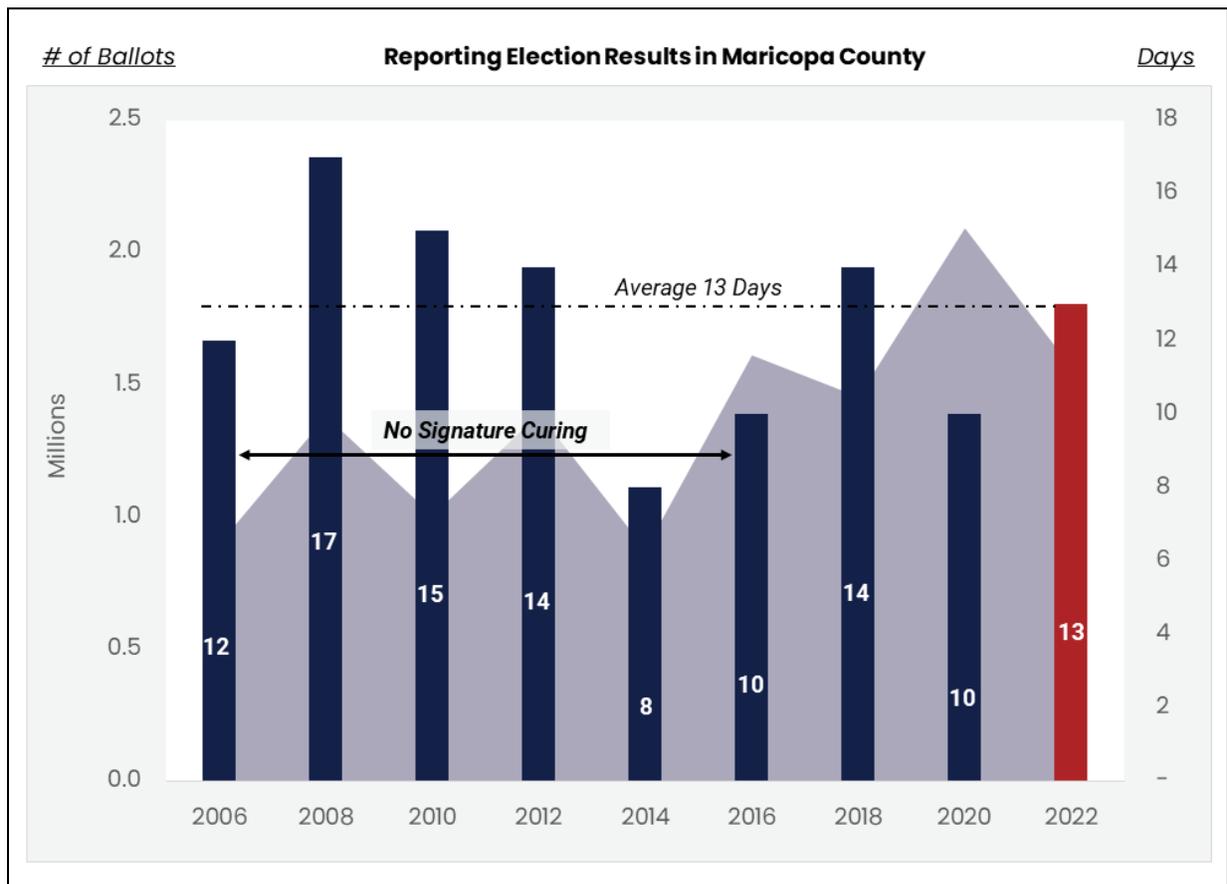
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## 1. "Late Early Ballots" – Getting Results Faster

Many Arizonans want faster results. So do I. So do the people in my office.

But the term "faster results" is inexact.

Arizona has never had all results available on election night. No state does. For example, since 2006, Maricopa County has taken, on average, 13 days to count all ballots in the general election. This is consistent with other counties in Arizona. And it is consistent with counties in other states, including Florida, where in the November 2022 General Election, Miami-Dade County, Broward County, and Duval County all took ten days to complete their counts.



What we want is a higher percentage of results within the first 24 hours – say 95% of total results. This will allow Arizonans to quickly know the winners in all but the most closely contested races. And in this respect – getting to 95% – Arizona (as well as all other western, mail-vote-heavy states) lags most states owing to the existing legislative framework and Arizona voter practices.

## **1.A. The “Problem”**

There is nothing inherently problematic with the current system. No inaccuracies are created, no certification is delayed, no eventual officeholders are prevented from executing their duties, no budgets are stalled.

But there are several real reasons to address tabulation speed:

### **1.A.i. Voter Wishes**

First, the nature of contests in Arizona has changed, but the expectation of many Arizonans has not. Voters regularly tell me that they “remember going to bed on Election Night knowing who won.” Some of this is revisionist history,<sup>2</sup> but this also reflects the changing political landscape of Arizona. In races with wide margins, the winner is easily deducible with 75% of the results available. For example, in the August 2022 primary election, Maricopa County had 82% of results available on Election Night. This was sufficient for television networks to call the Democratic gubernatorial primary in favor of Katie Hobbs, but it was not sufficient for networks to responsibly call the winner in the much closer Republican primary. Similarly, in November 2018, Arizonans could go to bed knowing that Doug Ducey had been reelected governor, but it took a week to comfortably call the U.S. Senate race between Martha McSally and Kyrsten Sinema.

Increasingly, statewide general election contests in Arizona look less like Governor Ducey’s 2018 contest and more like the Senator McSally vs. Senator Sinema contest – a margin of less than 3%. And for this reason, Arizonans are increasingly aware that not all votes are tabulated on Election Night.

We hear from these Arizonans. For both the recent August Primary and November General Elections, we received thousands of emails, phone calls, and social media messages asking about the time it takes to tabulate results. If this is what Arizonans care about, then we want to address the issue.

### **1.A.ii. Voter Confidence**

Second, bad actors exploit the delay to make unfounded claims of fraud or inaccuracy. The narrative of “I went to bed on Election Night and candidate X was ahead, but then the other candidate was ahead when I woke up, something must be off” is now well known. And while everyone in the elections community understands why not all ballots are tabulated in 24 hours, the protracted process understandably causes confusion to many Americans and can damage confidence. In the lead-up to the 2022 election, *The Washington Post* predicted that “counting delays will help fuel claims of fraud.”<sup>3</sup> Similarly, the Bipartisan Policy Center wrote in September 2022 that:

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<sup>2</sup> For example, the winner of the 2002 gubernatorial contest between Janet Napolitano and Matt Salmon could not be determined for multiple days.

<sup>3</sup> Tom Hamburger, Yvonne Wingett Sanchez, and Patrick Marley. *The Washington Post*. November 7, 2022. [“Election officials fear counting delays will help fuel claims of fraud.”](#)

“After an election, the period between the close of polls and release of unofficial results is vulnerable to mis- or disinformation. Despite public awareness in 2020 that unofficial results in many states would be delayed, confusion about the results spread after the polls closed and before results were released. Longer wait times were exploited to reduce public trust in the election process.”<sup>4</sup>

Many people will read the above and (very reasonably) state that what needs to be changed is mis- and disinformation about elections, not the existing election process. But as we’ve seen over the last two years, election disinformation is very difficult to combat, but by compressing the time to get to 95% of results, mis- and disinformation has less time to fester.

### ***1.A.iii. Election Administrators Put In An Untenable Situation***

In the days following the November general election, the Republican Secretary of State for Ohio, Frank LaRose, tweeted, “Dear Arizona, need some advice on how to run an election the right way? Your process is obviously not working and *it’s the dedicated, hardworking local election officials who are stuck picking up the pieces.*”<sup>5</sup>

LaRose is right to point out that Arizona election law puts Arizona election officials between a rock and a hard place. Arizona law requires counties to accept early ballots up until 7:00 PM on Election Day and prohibits counties from retrieving those ballots prior to polls closing. But the law also requires signature verification of the hundreds of thousands of early ballots dropped off on Election Day and process them in bipartisan teams.<sup>6</sup> Those results are not available within 24 hours.

And we pay the price. It was in the days *following* Election Day for the November 2020 general election, the August 2022 Primary Election, and the November 2022 General Election when protests erupted, and threats and vitriol poured in through phone, email, and social media. For example, on the morning of Thursday, August 4 – two days after August primary Election Day – I received the following email from [bytesandbytes@protonmail.com](mailto:bytesandbytes@protonmail.com) complaining that we could not yet determine the winner of the Republican gubernatorial primary:

“Steve, count the votes. There’s no happy ending for you and your side on this. Trump will hold you accountable. I understand that you can’t deviate from the Election Steal but you will lose in the end. Perhaps Trump will have you hung as a traitor when he’s president again. Hope it’s broadcasted live on pay-per-view or something. I’d like to have a black and white poster in my office of you hanging from the end of a rope during your Gitmo trial & execution.”

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<sup>4</sup> Grace Gordon, Oliver Hymen-Metzger, Christopher Thomas, and Kylee Zabel. *Bipartisan Policy Center*. September 2022. “[From Examination to Tabulation: Ballot Pre-processing Policies Explained.](#)”

<sup>5</sup> Frank LaRose. *Twitter (@FrankLaRose)*. November 12, 2022. “[Dear Arizona, need some advice...](#)” (emphasis added).

<sup>6</sup> Throughout 2021 and 2022, many politicians wrongfully accused Maricopa County of cutting corners on its signature verification process. Frustratingly, many of those same people then in November 2022 that Maricopa County took too long in reviewing early ballots dropped off on Election Day.

I received scores of emails to this effect in the days following the August Primary simply because of the way Arizona’s election laws have long existed. The situation for election officials is untenable. (Note: I’m not statutorily responsible for ballot tabulation, but it is my leading cause of hate mail, death threats, and censures).

The current system setup is very problematic for election officials.

#### ***1.A.iv. Arizona’s National Reputation***

Two days after polls closed for the November 2022 general election, Utah had 61% of results available, Washington had 66%, Oregon had 73%, and California had 46% of results available.

All lagged behind Arizona.

But while national commentators fixated on Arizona (and Nevada), they largely ignored those states. Why? Because those states have wide margins of victory and don’t determine the balance of the United States Senate.

This leads to comments like the one above by Secretary LaRose of Ohio that portray Arizona in a less-than-flattering light. Unfairly or not, many national commentators use time-to-declare-winners as a general proxy for the state’s quality of governance, and this does *not* promote Arizona’s reputation as a well-run state – a reputation we deserve and should cultivate.

#### ***1.A.v. Treatment of Candidates***

The treatment of political candidates is perhaps not the top concern of Arizonans, but for candidates in close contests, the process borders on the inhumane. I can only imagine the pain and emotional rollercoaster that Kris Mayes, Abe Hamadeh, and their supporters have suffered as a result a very protracted contest.

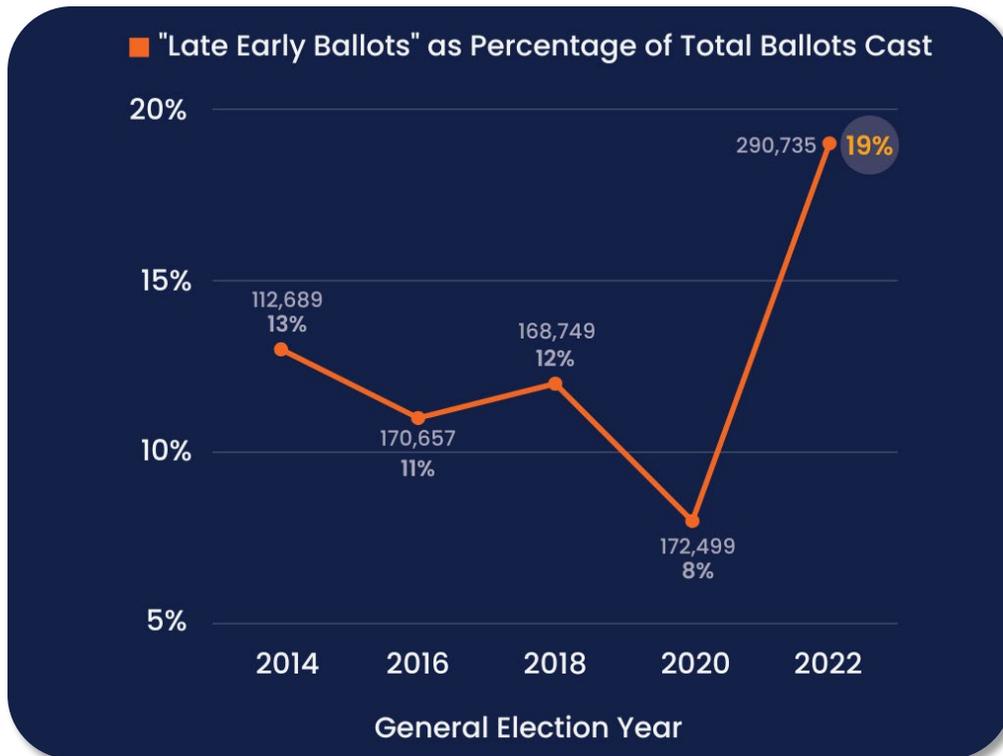
Additionally, victors like incoming Attorney General Kris Mayes are delayed from beginning the important preparations of taking office and naming new staff.

#### ***1.B. The Growing Trend of “Late Early Ballots”***

Any discussion of faster results must address the phenomenon of “late early ballots.” These are ballots received by the voter in the mail, filled out, placed in a signed and sealed return affidavit envelope and returned at a voting location *on Election Day*. This is the principal inhibitor of having 95% of results (or more) available on Election Night.

The number of “late early ballots” in Arizona continues to grow. In Maricopa County alone, voters dropped off 290,735 early ballots at voting locations on Election Day in the recent November 2022 general election. That represented almost 20% of *all* ballots cast in the County

in the election and a significant increase from past elections, especially as a percentage of the total vote:



By law, elections officials cannot retrieve these “late early ballots” dropped off on Election Day until the voting location has closed and voters have left.<sup>7</sup> Polls close at 7:00 PM. That does not mean, however, that voters are gone by 7:00 PM. Many voters arrive at, or right before, 7:00 PM on Election Day. These voters typically do not leave polls until 7:45 PM – later at popular locations. Accordingly, the Recorder’s Office does not receive “late early ballots” at our central facility until 9:00 PM or later on Election Night.

Once we receive the “late early ballots,” the Recorder’s Office must scan the barcode on the return envelope (which tells us that the person is a registered voter who has not previously voted), then capture an image of the signature on the return envelope, then verify that signature against the voter’s past signatures, then audit that signature verification, and then send the envelope to a bipartisan team to extract the ballot from the envelope, making sure there is only one ballot in the envelope, that the ballot style is correct, and that the ballot is not damaged. All actions are documented and reconciled at each step, and the chain of custody is, importantly, preserved. Only after all steps are completed can the ballot be sent to the Board of Supervisors for tabulation.

These early ballot processes are important steps. They ensure the integrity of the early voting process and should not be compromised. But these steps take time.

<sup>7</sup> [A.R.S. § 16-564\(A\)](#); [A.R.S. § 16-564\(F\)](#); [A.R.S. § 16-572\(C\)](#). Last accessed December 5, 2022.

For the recent November election, we completed signature verification of the 290,735 “late early ballots” by Thursday evening (48 hours after polls closed). We finished bipartisan processing of all “late early ballots” on Sunday afternoon. We delivered ballots to the Board of Supervisors in batches of 200 as they became ready for tabulation.

### **1.C. Solution: Eliminate “Late Early Ballots”**

The cleanest solution to “late early ballots” is to require all early ballots be dropped off by the close of the statutorily designated early voting period – 5:00 PM on the Friday before Election Day.<sup>8</sup> Any voters who want to vote *after* 5:00 PM on Friday could either drop off their early ballot at the county recorder’s office or other limited designated locations, or vote in-person on Election Day (check in, get new ballot printed, fill out ballot, and feed into tabulator). Early ballots returned through the United States Post Office would still be accepted, as they currently are, until 7:00 PM on Election Day.

This is what Florida does. Voters in Florida can drop off early ballots in their signed and sealed return envelopes during the early voting period. Once the early voting period ends, Florida voters can drop off early ballots at the central election office, but they *cannot* drop off early ballots at the voting locations. As a result of this limitation, the largest county in Florida (Miami-Dade County) had approximately 4,400 early ballots dropped off on Election Day. Maricopa County had approximately 290,000 early ballots dropped off on Election Day. This enables Florida to have a higher percentage of ballots tabulated within 24 hours of voting ending.

#### **1.C.i. Pros**

- This would allow Arizona to have 95% of results within the first 24 hours
- This is an administratively simple solution
- This is consistent with the practices of many states
- This is a straightforward rule for voters

#### **1.C.ii. Cons**

- Many Arizonans currently vote with “late early ballots.” For the recent November general election, 290,735 voters in Maricopa County voted with a “late early ballot” – almost 20% of all voters in the election
- Use of “late early ballots” is increasing. Maricopa County received almost 120,000 more “late early ballots” in November 2022 versus November 2020, despite receiving almost 500,000 more total votes in the November 2020 election

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<sup>8</sup> This is the solution I have been proposing since August 2022. See, e.g., Stephen Richer. *Twitter* (@Stephen\_Richer). December 14, 2022. [“Election reform...”](#) Mike Broomhead and Stephen Richer. *The Mike Broomhead Show, KTAR*. December 8, 2022. [“Interview with KTAR’s Mike Broomhead - December 8, 2022”](#)

- Many Arizonans have been voting by “late early ballots” for many years and could be surprised, confused, and angered by a prohibition of this practice
- Eliminating “late early ballots” would currently have a disproportionate impact on registered Republicans in Maricopa County. In November 2022, in Maricopa County, Republicans accounted for 41.4% of “late early ballots,” Democrats 29.4%, Libertarians 0.9%, and Independents 28.3%. For the November 2020 election, those numbers were Republicans 36.2%, Democrats 27.7%, Libertarians 1.5%, and Independents 34.5%

### **1.C.iii. Remedies**

- To compensate for new limits on “late early ballots,” the early voting period could be expanded from 27 days to 32 days – a number that is consistent with other states<sup>9</sup>
- Additionally, counties could increase the number of ballot drop-off locations available in the week before Election Day
- Eliminate “Emergency Voting” and expand Election Day from one day to Saturday through Tuesday, giving voters four days to get a new ballot printed and feed it into a tabulator at the voting location (more on this in a later section)

### **1.D. Solution: Election Day “Late Early Ballot” Check-In**

The above proposal is the cleanest solution to the “late early ballots” phenomenon.

If, however, Arizona wants to retain the option to drop off early ballots at all voting locations on Election Day, the process could still be expedited by requiring early ballot voters to check in on Election Day.

In this model, voters with early ballots on Election Day would get in line, check in using the voting location’s e-pollbook system, and show identification – just as a normal Election Day voter would. Then, instead of getting a new ballot, the voter would deposit his early ballot envelope into a secure box, as is currently done. However, under this proposal, these ballots would not need to be signature verified upon return. This would remove a time-intensive component of the normal early ballot process.

Importantly, under this proposal, voters would *not* be able to drop off the “late early ballots” for their family members or household members. They could still do that during the early voting period, but would not be able to do so on Election Day.

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<sup>9</sup> National Conference of State Legislatures. August 30, 2022. [“States & Territories with Early In-Person Voting.”](#)

### **1.D.i. Pros**

- This would allow Arizona to have a higher percentage of results available in the first 24 hours
- This is an administratively feasible solution
- This would preserve some form of “late early ballot” drop offs

### **1.D.i. Cons**

- This would not expedite the process as much as the first solution, and it would likely not produce 95% of results within 24 hours
- This would add some complexity and confusion to the administration of Election Day, and, likely for this reason, is not a common practice of voting jurisdictions
- While this would allow “late early ballots” for the individual voter, it would not allow voters to drop off “late early ballots” for their family or household members. This could cause voter confusion and frustration
- Limiting the use of “late early ballots” could have a disproportionate impact on registered Republicans in Maricopa County. In November 2022, in Maricopa County, Republicans accounted for 41.4% of “late early ballots,” Democrats 29.4%, Libertarians 0.9%, and Independents 28.3%. For the November 2020 election, those numbers were Republicans 36.2%, Democrats 27.7%, Libertarians 1.5%, and Independents 34.5%

### **1.E. Solution: Election Day Pickup of “Late Early Ballots”**

At the beginning of 2022, I proposed in *The Arizona Republic* that county workers be allowed to pick up “late early ballots” throughout Election Day.<sup>10</sup> Current law prohibits the retrieval of any type of ballot prior to voting locations closing.<sup>11</sup>

As mentioned above, under the current legal framework, my office does not even receive “late early ballots” until 9:00 PM on Election Night. Only then can we start the scanning, imaging, signature verification, and bipartisan processing required of early ballots. If we changed the law to allow for mid-day retrieval, then we could get an early start on at least some of the “late early ballots.”

#### **1.E.i. Pros**

- This proposal would not change the voter experience
- It would not remove voting options
- It would be a small, simple administrative change

#### **1.E.ii. Cons**

- It would have a limited impact on the issue, speeding the process up by only a few hours
- It could cause confusion to see election workers removing some ballots from voting locations during the middle of the day

### **1.F. Less Workable: Feeding “Late Early Ballots” Into Tabulators on Election Day**

Several politicians and commentators have very reasonably proposed solving the “late early ballot” problem by requiring “late early ballot” voters to feed their early ballots into the existing tabulators on Election Day. Senator J.D. Mesnard successfully authored SB 1362 in 2022 to facilitate this solution,<sup>12</sup> and Governor Ducey briefly endorsed the idea as a possible solution.<sup>13</sup>

Unfortunately, this poses major logistical and security challenges that make it highly problematic. For that reason, no jurisdiction in the United States employs this solution.

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<sup>10</sup> Stephen Richer. *AZ Central*. January 15, 2022. [“I’ve spent months defending Arizona elections. But we can still improve them.”](#)

<sup>11</sup> [A.R.S. § 16-564\(A\); A.R.S. § 16-564\(F\); A.R.S. § 16-572\(C\)](#). Last accessed December 5, 2022.

<sup>12</sup> [Senate Bill 1362](#).

<sup>13</sup> Mary Jo Pitzl. *AZ Central*. December 5, 2022. [“Ducey endorses an Election Day plan that could help tally votes faster, but at a cost.”](#)

First, in Arizona, only half the counties currently allow on-site tabulation. Apache, Coconino, Gila, Mohave, Pima, Pinal, Santa Cruz, and Yavapai counties do not have on-site tabulation. This proposal would require them to purchase and develop two new on-site tabulation systems.



Second, early ballots and election day ballots must be programmed differently and cannot be fed into the same tabulators. Without this security measure in place, voters could easily double vote.

Third, because of the above, this solution would require a duplicative setup of tabulators at every voting location. This would require a significant equipment and staff investment. More problematically, many voting locations do not have the space for running concurrent systems. Additionally, the dual system would likely confuse voters, as, unlike other pieces of equipment (e.g., the check-in stations), certain voters would be directed to certain tabulators and barred from using the other set of tabulators.

Fourth, if we are curbing the practice of dropping off “late early ballots” on Election Day, then the much cleaner solution is to simply do what other states do and move that deadline up.

## **2. Expand Election Day – Allow Tabulation On-Site For Multiple Days**

Arizona law currently allows on-site tabulation *only* on Election Day. All days prior to Election Day are governed by early voting law – even if voting in person, the voter must place his ballot inside a sealed and signed envelope to be processed at the central election facility.

This is different from most other states and should be reconsidered for two reasons:

First, the law currently creates a redundancy that delays tabulation results. In-person voters must check in through the e-pollbook system and show identification before receiving a ballot, regardless of whether they are voting early or on Election Day. Nonetheless, the law currently requires county recorders to treat ballots by in-person voters before Election Day the same way as voters who mail back their ballots: ballots must come back in a signed and sealed envelope that must be signature verified, must be audited, and must be processed. These steps are redundant, serve no election integrity purpose, and delay the tabulation of in-person early ballots. Instead, the law should allow on-site tabulation of these in-person early voters.

Second, under the current legal framework, on-site tabulation equipment runs for the *first time on Election Day*. This is a perilous framework. Election Day is by far the busiest day of voting, and it should not be the first day any equipment is used. It is better to identify any problems on less-trafficked voting days than on Election Day. Instead, counties should be allowed to begin on-site tabulation before Election Day.

The early voting period is the statutory authority of the 15 county recorders. It begins 27 days before Election Day and ends at 5:00 PM the Friday before Election Day.<sup>14</sup>

Statutory authority then shifts to the county Board of Supervisors. Emergency Voting is available on Saturday, Sunday, and Monday and operates the same way as in-person early voting except is exclusively for voters “experiencing an emergency.” Tuesday is Election Day.

The Emergency Voting period should be replaced with additional days governed by Election Day law, meaning counties could tabulate on-site on the Saturday, Sunday, and Monday before Election Day.

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<sup>14</sup> [A.R.S. § 16-542\(C\)](#); [A.R.S. § 16-542\(E\)](#).

### **3. Adjudication Process – A Needed Conversation**

Many voters stain their ballots with coffee, smudge their ballots, or otherwise cause a mark that interferes with tabulation. Or voters improperly fill out the oval (with a check mark, for example). Or voters fill out one oval, but then cross out that oval, and fill in the other oval. Or voters fill in two ovals, instead of just one (overvote).

If this happens to an Election Day voter in Maricopa County, the on-site tabulator informs the voter that he has, for example, overvoted a contest. He can choose to spoil that ballot, get a new ballot, and correct the mistake. Or he can choose to cast the ballot without correcting it, and the overvote will not record a vote for either candidate.

In the case of early voting, however, the voter is not there to correct a mistaken mark. So instead, the ballot is sent to an “adjudication board” comprised of one Republican and one Democrat, overseen by one inspector. Those bipartisan boards determine if the voter’s intent is obvious and, if it is, electronically mark the ballot so the voter’s intended vote can be counted. For example, if on my early ballot, I filled out the bubble for both Joe Biden and Donald Trump, but then crossed out Joe Biden’s name, circled Donald Trump’s name, and wrote in the margin “intended as vote for Trump!” then the tabulator would send the contest to an adjudication board as an overvote, but the adjudication board could reasonably determine that my intent was to vote for Donald Trump and therefore award a vote to Donald Trump.

Adjudication is prescribed by state law.<sup>15</sup> Specifically, Arizona Revised Statutes section 16-1621(B) reads:

“If the counting center automatic tabulating equipment includes an electronic vote adjudication feature that has been certified for use as prescribed by section 16-442 and the board of supervisors or officer in charge of elections authorizes the use of this feature at the counting center . . . The board of supervisors or officer in charge of elections shall appoint an electronic vote adjudication board that consists of two judges who are overseen by an inspector, with the two judges equally divided between the two largest political parties as prescribed by section 16-531, subsection D to adjudicate and submit for tabulation a ballot that is read by the tabulation machine as blank in order to determine if voter intent is clear on a portion or all of the ballot, or any portion of any ballot as prescribed by section 16-610 or 16-611, or to tally write-in choices as prescribed by section 16-612.”<sup>16</sup>

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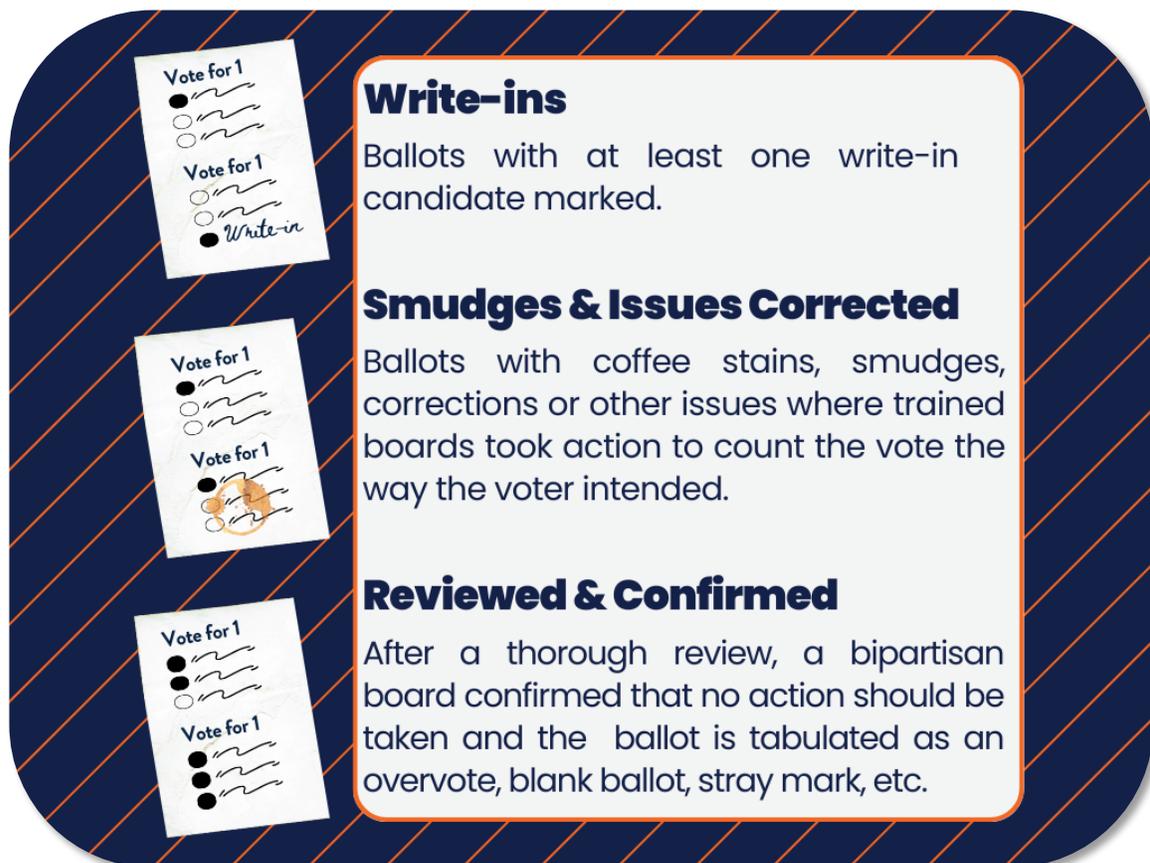
<sup>15</sup> [A.R.S. § 16-621\(B\)](#). [Help America Vote Act \(Title 3 Section 301\)](#).

<sup>16</sup> [A.R.S. § 16-621\(B\)\(2\)](#).

In the November 2020 General Election, Maricopa County had approximately 133 million early votes (approximately 1.9 million early ballots multiplied by an average of 70 contests on each ballot). Of these, 238,488 votes went to adjudication boards (approximately 0.17% of votes cast):

- Write-ins: 71,380
- Action: 63,917
- No-Action: 103,191

Accordingly, thanks to adjudication, the County tabulated 63,917 valid votes (spread throughout all of the contests) that otherwise wouldn't have been included.



**Write-ins**  
Ballots with at least one write-in candidate marked.

**Smudges & Issues Corrected**  
Ballots with coffee stains, smudges, corrections or other issues where trained boards took action to count the vote the way the voter intended.

**Reviewed & Confirmed**  
After a thorough review, a bipartisan board confirmed that no action should be taken and the ballot is tabulated as an overvote, blank ballot, stray mark, etc.

But adjudication also slows down tabulation. Adjudication is a labor-intensive process that requires bipartisan teams to scrutinize each vote. These results are logged, confirmed, and audited. Ballot batches and the results of all non-adjudicated voters cannot be produced until all adjudication is complete. And while tabulation machines can tabulate tens of thousands of ballots in an hour, the adjudication process is limited by the number of trained bipartisan adjudication teams the elections facility can host, and the number of hours those teams can work.

Additionally, the law currently requires adjudication of voter intent only if possible. While Maricopa County has acquired the technology and developed the expertise to accurately adjudicate voter intent, and has accordingly determined that adjudication is possible, the

practice is not uniform throughout all 15 counties. This means that while an early ballot in Maricopa County might benefit from an adjudication board, a ballot in another county might not.

Many states, such as Secretary LaRose's Ohio, choose to only adjudicate write-in votes. For voter intent issues such as smudges, check-marks, and overvotes, they simply do not award a vote in the contest. Advocates of this approach argue that it is the voter's responsibility to make sure he fills out the correct number of ovals, correctly fills in the oval, and doesn't smudge his ballot. Counties should not delay tabulation to fix what the voter could fix himself. Opponents of this practice argue that many votes are abandoned that could be rehabilitated with additional resources and patience.

The Arizona elections and policy communities should determine if we want to continue to adjudicate early ballots for voter intent and, if so, how to standardize the process across counties.

#### **4. Adjudication Process – Do We Need 80+ Contests On One Ballot?**

More contests on the ballot mean more opportunity for voter error, which means more ballots are sent to adjudication.

Maricopa County had 80 contests on the average November 2022 ballot. All it takes is one overvote in these 80 contests for the early ballot to be sent to adjudication. That delays the production of results for the other 79 contests, as well as the results of all other ballots in the report batch.

Shorter ballots would result in less adjudication and faster results. Accordingly, I previously asked policymakers if all contests are necessary (do we need judicial retention elections – we had 53 in Maricopa County in November?) and, if so, can some of them be moved to odd-year elections?

I think it's worth a conversation. Especially if the number of judges increases and we, therefore, have even more judicial retention elections (which seems reasonable given the growing demands put on the superior court system). Abe Kwok of *The Arizona Republic* already offered a counterargument to this recommendation.<sup>17</sup>

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<sup>17</sup> Abe Kwok. *AZ Central*. December 23, 2022. "[Making this election reform to speed results is begging for \(more\) trouble.](#)"

## 5. *Who Runs Elections? – Two Cooks in the Kitchen*

State statute currently divides election administration between county recorders and county boards of supervisors. County recorders are responsible for voter registration, early voting, and provisional ballots. County boards of supervisors are responsible for emergency voting, Election Day, and tabulation.

This is unwieldy, confusing, inefficient, and will potentially become far more problematic in the future as election administration has become more politically charged.

Consider something as simple as an election website. If a voter wants to know about early voting, he must go to the county recorder's website. If he wants to know about Election Day or tabulation, he must go to the website of the election department of the board of supervisors.<sup>18</sup>

Or consider a voter inquiry. The voter shouldn't have to research whether he should email the county recorder or county board of supervisors. And, currently, depending on whom the voter emails, he could get a very different answer. It doesn't take much imagination to envision a voter getting different answers if he emails both a county recorder and a county election department about "whether or not it's unlawful to exclusively hand count all of the ballots."

Or consider operational issues like voting locations. In some counties, the voting locations used for early voting – that are procured and operated by the county recorder – are entirely different from the voting locations used on Election Day that are operated by the board of supervisors. This is inefficient and can also cause voter confusion.

Or consider election equipment. In some counties, the recorder and board of supervisors both have their own separate equipment (e.g., e-pollbooks for voter check-in) that isn't shared. This is inefficient.

There are many more examples of the above. And these challenges could become more pronounced as election administration (unfortunately) becomes more political.

This is likely why some Arizona counties previously united all election administration responsibilities under one elected body (e.g., Maricopa County delegated all election administration responsibilities to the recorder until 2019, as did Pinal County prior to 2017). And it is likely why I cannot find other jurisdictions that divide election administration between two elected bodies.

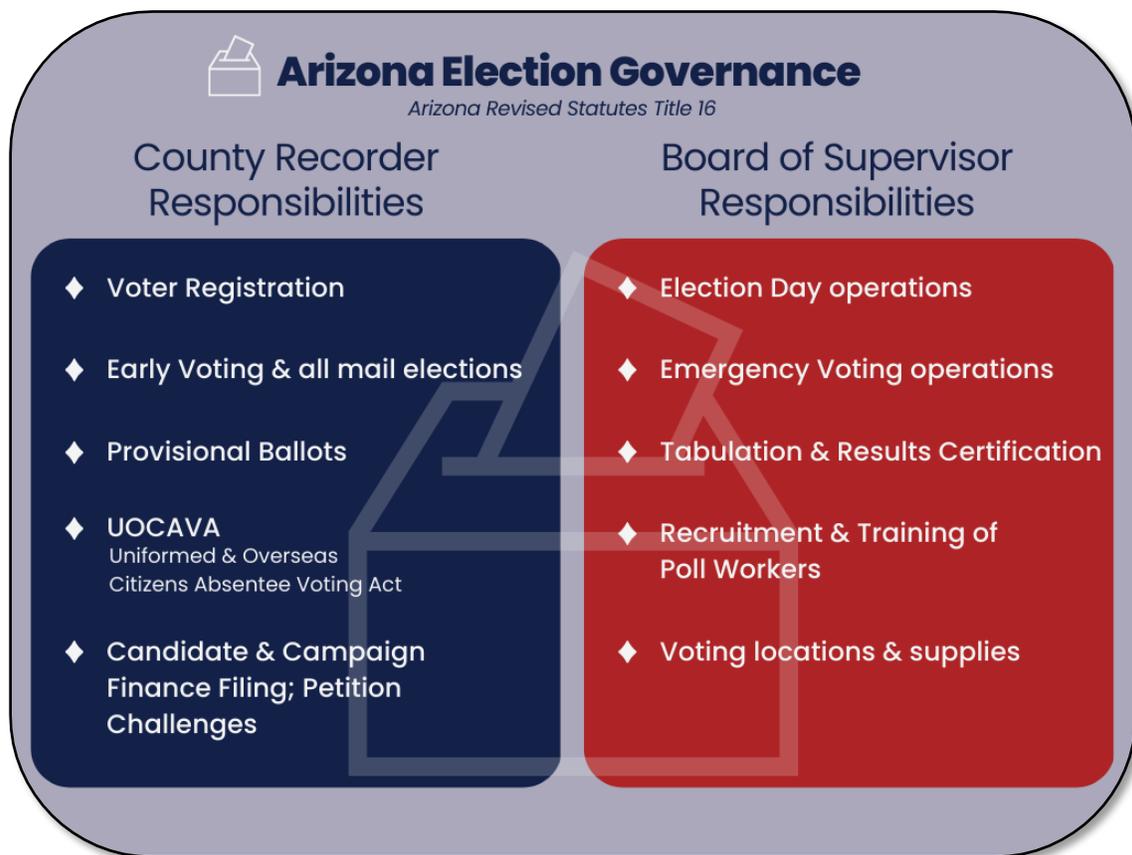
If election administration is to be consolidated under one elected body, it likely should be under the county board of supervisors.<sup>19</sup> While countywide officers often play the role of chief

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<sup>18</sup> Maricopa County currently has a unified elections website, but only because, unlike every other countywide elected officer, I chose to forego any personal branding and have my department build a website that could house both my office's responsibilities as well as those of the Board of Supervisors. The next recorder could reverse this decision on day one and cause significant voter confusion.

<sup>19</sup> I launched my campaign in 2019 when the Maricopa County Recorder was responsible for all election administration responsibilities, and I would happily assume that responsibility. Removing myself from the equation, however, I think election administration is better assigned to the Board of Supervisors.

executive officer themselves, boards of supervisors typically delegate administrative responsibilities of different divisions to careerist professionals.<sup>20</sup> This likely ensures a more consistent level of professionalism and relevant expertise (professionals are chosen because of their relevant skillset and work history, politicians might not be). Having the board of supervisors in charge of election administration would also likely yield fewer dramatic shifts in election administration policy – it is less likely that all three or five supervisors are suddenly replaced by new electeds who view election administration very differently than it is one recorder being replaced by somebody with highly contrasting views. Finally, most boards of supervisors have bipartisan representation. This means that an appointed director would need to justify decisions to both Republicans and Democrats. The elected recorder, conversely, is a body of one, and only belongs to one party.



<sup>20</sup> For example, the director of the Parks and Recreation division or the director of the Animal Care and Control division.

## 6. The Election of Recorders

If county recorders retain election administration responsibilities, they should be elected on a nonpartisan basis.

Some Arizona political commentators have suggested that all administrative, non-policy positions should be elected on a nonpartisan basis (e.g., county assessor, constables, justices of the peace). Or that they shouldn't be elected at all.<sup>21</sup>

But the consideration is particularly acute for the county recorder offices, where the major interest groups are the political parties themselves. Other offices are lobbied, for example, by commercial landowners pitted against residential landowners. Or perhaps parents' groups versus teachers' unions. But those offices don't run under the designation of those interest groups. Having recorders elected as Republicans or Democrats is like having an elected director of the Food and Drug Administration who had to run as either "Team Generic Drug" or "Team Branded Drugs." This more closely ties the elected's decisions to the interest group than it would in the normal lobbying context. This is especially true in counties where one political party is dominant, and its primary is determinative. This could yield decisions by the *one* elected that aren't in the interest of the majority of the county, but are in the interest of the special interest lobbying group.

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<sup>21</sup> Laurie Roberts. *AZ Central*. June 19, 2020. "[Goodbye, Paul Petersen, and good riddance.](#)"; Hank Stephenson. *Arizona Agenda*. October 8, 2021. "[Why do we elect these people?](#)"

## 7. Non-Governmental Mailing Disclosure

Well-intended nonprofit organizations often attempt to register voters by using commercially available residential datasets to mass mail packets that include a voter registration form, a return envelope addressed to the county recorder, and an official-looking letter encouraging the resident to register to vote.

But the commercial information is often inaccurate. Or the resident doesn't want to register.

We hear from these residents. They are mad, anxious, and confused. They think the mailers come from the county recorders. They want to know, for example, "why are you sending me a registration form when I've been registered to vote for 15 years." We respond that we didn't send the mailer, but the confusion is understandable

Representative (now Senator) John Kavanagh introduced HB 2170 last session to require that these mailers prominently disclose that they are *not* from a government entity. Kavanagh's bill passed in the Arizona House of Representatives, but did not make it through the Arizona Senate before *sine die*.

I hope that this bill can be revisited.



## ***8. Third-Party Voter Registration***

County recorders are flooded with voter registration forms in the weeks before major elections. Unfortunately, many of these voter registrations are wildly incomplete or seemingly fraudulent. Forms will, for example, list a correct name and address, but have an inaccurate birthdate, signature, or social security number. When contacted, the purported registrant often denies filling out a registration form. These forms jeopardize the accuracy of the voter registration database, and they require a massive amount of research and oversight by county recorder staff.

To improve this situation, the state should require organizations that conduct large-scale voter registration drives to register with the Secretary of State. These organizations could then be given voter registration forms with a designating serial number, enabling the forms to be traced back to the organization. These organizations could then be held accountable if they fail to submit voter registration forms in a timely manner, or if they submit seemingly fraudulent voter forms.

Additionally, the state legislature should consider barring organizations from paying independent contractors on a per-voter registration form basis. This method of payment likely creates perverse incentives for field workers.

## 9. AVID

Arizona law stipulates that “The secretary of state shall develop and administer a statewide database of voter registration information...”<sup>22</sup> To comply with this requirement, the Secretary of State began building the Access Voter Information Database (AVID) in 2016.

AVID is critical to Arizona’s elections. It serves as the primary voter registration system for 13 counties, and the other two counties (Maricopa and Pima counties) also rely on AVID. AVID allows for the submission of online voter registration forms through ServiceArizona and MVDNow. AVID allows county recorders to access important data from the Motor Vehicle Division and the Social Security Administration. AVID runs duplication reports to make sure voters are not listed in multiple Arizona counties. AVID imports deceased files, felony records, and incapacitation orders from other state and county offices.

But AVID needs help. It needs updates. It needs maintenance. It needs dedicated professionals who know how the system works. County recorders are united on wanting improvements to AVID.

AVID does not currently have a dedicated source of funding. Perhaps this can be accomplished legislatively. The Secretary of State’s Office is best equipped to know what resources AVID needs. These resources are highly important to the success of Arizona’s elections.

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<sup>22</sup> [A.R.S. § 16-168\(J\)](#).

## 10. ***Standardization of “Primary” Rules***

Arizona has two primaries that have two different sets of rules. The presidential preference election (PPE) happens in March of every presidential election year and is used exclusively for picking presidential nominees. Only registered members of the party can participate in the election – registered Republicans can vote in the Republican PPE, and registered Democrats can vote in the Democratic PPE. Independents (who currently make up the largest share of Maricopa County’s registered voters) *cannot* participate.

The statewide primary (primary election) happens in August of every even year and determines the partisan nominees for races such as Governor, U.S. Senate, U.S. House, Attorney General, Secretary of State, state legislators, and county positions. For this election, registered independents *can* participate, but they must choose which party’s primary (Republican or Democratic) they wish to participate in. Registered Republicans can only vote in the Republican primary, and registered Democrats can only vote in the Democratic primary.

This difference in rules causes significant confusion for independents – one-third of Arizona’s electorate. In March 2016, this confusion contributed to long lines of frustrated independents who could not participate in the PPE. The incongruity of the PPE and primary election likely also depresses independent participation in primary elections because independents remember being told that they cannot participate in the PPE, and they must “unlearn” that information every August.

The rules should be made the same for the PPE and the primary election.

## **11. Campaign Finance Reform**

Our current campaign finance system is weak. It relies on self-reporting and third-party referrals. A candidate could, for example, omit reporting a \$5,000 donation from Jim Ryan (made-up name), but the only way the omission would be caught is if the candidate self-reported the failure, or if Jim Ryan himself noticed that his donation was not included in the campaign finance report, or if a third person somehow knew that Jim Ryan had donated, but had not been reported (highly improbable).

The current system also doesn't prevent a candidate from simply saying that he has raised \$10 million. This might impress other donors and attract endorsements. But the money doesn't have to be there. Reports are never reconciled with actual bank statements.

Additionally, while the Secretary of State's Office (for statewide candidates and state legislature candidates), Recorders' Offices (for county candidates), and City Clerks (for city candidates) are appropriate campaign finance filing offices, they are likely not the appropriate bodies for campaign finance complaints. These offices do not have full-time, professional investigators; the officers are not typically staffed with lawyers equipped to make legal determinations, and these offices are typically busiest during election season – the same time that campaign finance complaints are typically filed.

The state legislature should consider assigning the investigation and enforcement of campaign finance laws to an entity well-equipped to investigate. And the state legislature should consider giving that body some level of audit authority to ensure the accuracy of campaign finance filings.

## 12. *Primary Date*

Moving the August primary to an earlier date would aid election administrators in multiple ways.

First, it would alleviate the time crunch that election officials will almost certainly face in future August primaries as a result of the new, expanded recount law. The recount, as well as the required hand-count audit of the recount (following the hand-count audit of the original count), will push up against the August canvass deadline and very possibly into the time period when counties need to begin building ballots for the November general election.

Second, an earlier primary would give counties more time to refurbish and test equipment after its use in the primary, before the general election.

Third, an earlier primary might break even-years into two more-manageable segments that could assist with the well-documented phenomenon of elections workers leaving the industry.<sup>23</sup>

Fourth, in 2022, the Maricopa County Recorder's Office received 20 times the number of public records requests it received prior to 2016. This is unlikely to change, and the volume is especially high immediately after elections. An earlier primary would give recorders' offices and elections department more time to spend on public records requests related to the primary election before turning to the November general election.

Fifth, if, as suggested above, the early ballot drop-off deadline is moved up, and the early voting period is started earlier to balance the number of drop-off days, then the current August primary and the November general election would be further compressed.

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<sup>23</sup> In Arizona, four of the 15 county recorders have voluntarily resigned in the last year. Miles Parks. *NPR*. March 10, 2022. "[1 in 5 local election officials say they're likely to quit before 2024.](#)"

## Closing Statement

The above proposals are a starting point for a larger conversation that needs to be had about election administration in Arizona. I firmly believe that Arizona can and should be a model of good election governance across the country, with a system that bolsters voter confidence while maintaining its voter-friendly demeanor. I look forward to working with state legislators and relevant stakeholders to make meaningful improvements to our election laws for Arizona voters—they deserve nothing less.

